

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5875 OF 2017

ORDER:

Proof of service in relation to respondent/ defendant filed is recorded. Heard the learned counsel for the plaintiffs and perused the grounds urged in the revision and the impugned order of the lower Court dated 04.10.2017 on the application filed by the plaintiffs in I.A.No.221 of 2017 under Order VIII Rule 10 C.P.C. in the suit filed by the plaintiffs questioning the action of the Chief Executive Officer of the A.P.State Wakf Board in his official capacity, by seeking the relief of declaration declaring the orders bearing No.34/ Prot/ M6/ WG/ 04 issued by the defendant against the plaintiffs in respect if suit properties under Section 54(3) of the Wakf Act, 1995 (for short 'the Act'), is malafide by putting an ante-date of 30.10.2017 as illegal, null and void and for consequential perpetual injunction restraining the defendant from issuing any such order in future similar to the said order and for costs.

2. The written statement is filed by the defendant, who is the Chief Executive Officer of the Wakf Board as he is arrayed as defendant. No doubt, the plaint cause title clearly shows the Chief Executive Officer, A.P.State Wakf Board, Office at Haj House Building, Razzak Manzil, opposite Public Gardens, Nampally, Hyderabad. In the short cause title of the written statement instead of saying the Chief Executive Officer of the Wakf Board

mentioned as State Wakf Board. Taking the said mistake into advantage, the plaintiffs filed the application supra before the lower Court to treat that written statement filed by the defendant is as if filed by the Wakf Board and not by the defendant, Chief Executive Officer of the Wakf Board and thereby, as if there is no written statement and pass directly a decree against the defendant.

3. A reading of Order VIII Rule 10 C.P.C. speaks that if the defendant failed to file the written statement within the time fixed or permitted as the case may be, the Court shall pronounce judgment against him or makes such order in relation to the suit as it thinks fit and on pronouncement of such judgment, a decree shall be drawn up. The very wording gives option to the Court either to pronounce judgment or to pass such other order as it thinks fit. Interpreting the same, the Apex Court in *Balraj Taneja and another v. Sunil Madan and another*¹ held that the Court is not bound to pass a decree at once even no written statement filed by the defendant, when disputed questions of fact involved, for the plaintiffs to lead evidence and to prove their case for entitlement of the relief. Once such is the case, the dismissal of application for rejection of plaint no way requires interference in revision including in its observation that a mistake in the short cause title of the written statement instead of saying Chief Executive Officer of the Wakf Board, omitted to mention the Chief Executive Officer and mentioned only the Wakf Board will not be

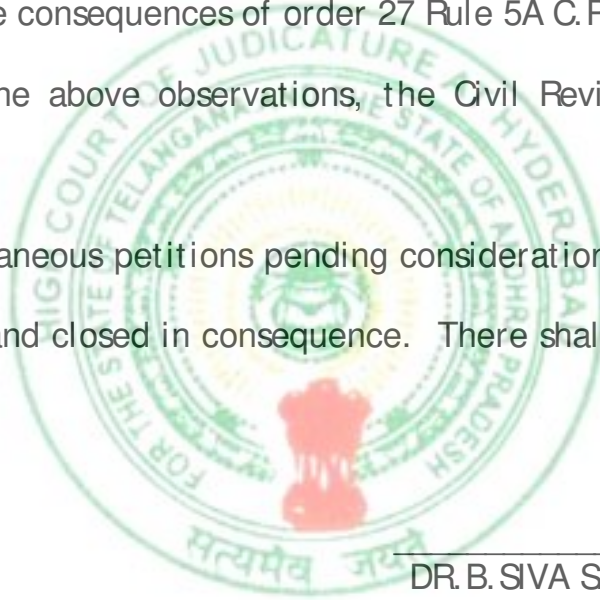
¹ AIR 1999 SC 3381

to the advantage of the plaintiffs to say that there is no written statement of the defendant.

4. Having regard to the above, once it is the observation rightly concluded by the Tribunal, there is nothing to interfere but for if at all if there is any bar under Order XXVII Rule 5A r/w Sections 79 and 80 I.P.C. of necessity of impleading the Government as a party from the Chief Executive Officer of the Wakf Board is a Public Officer within the meaning of Section 2(17) C.P.C., the plaintiff got remedy to implead the State Government as co-defendant otherwise the consequences of order 27 Rule 5A C.P.C. follows.

5. With the above observations, the Civil Revision Petition is disposed of.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.



DR. B. SIVA SANKARA RAO, J

Date: 06.12.2017
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